Supreme Court, U. S.
FILED
FEB 6 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITIONER'S REPLY MEMORANDUM

W. WARREN PLOWDEN, JR.
ERIC D. GRIFFIN, JR.
500 First National Bank Building
Macon, Georgia 31201
BEN B. MILLS, JR.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner

R. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF AUTHORITIES

CASES

Chapman v. Crane, 123 U.S. 540 (1887) 2
Reynolds v. Reynolds, 217 Ga. 234, 123 S.E. 2d 115 (1961) 3
U. S. v. Ballard, 322 U.S. 78 (1944) 4
Young v. Ragen, 337 U.S. 235 (1949) 5
Zacchini v. Scripps-Howard Broadcasting Company, 433 U.S. 562 (1977) 6

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-961

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GOETZKE,
Respondent.

PETITIONER'S REPLY MEMORANDUM

The Brief for Respondent in Opposition ("Resp. Brief") makes several misleading or mistaken assertions to which a short reply is warranted:

1. There is absolutely no basis for Respondent's argument that Petitioner failed to properly present a federal question to this Court for review. Petitioner, at the very first available opportunity, raised the constitutional issues at bar through its objections to Respondent's Interrogatories and Request for Production and has continued to maintain its right to refuse to answer this discovery on constitutional grounds throughout the proceedings in the trial court and before the Supreme Court of Georgia. *See* Petition for a Writ of Certiorari ("Cert. Petition") at 4-7. The Supreme Court of Georgia ignored Petitioner's assertion of the constitutional objections by treating Petitioner's objections as going to the *admissiblity* of the dis-

covery information at trial rather than going to its *production* in the first place. However, the evasion of the serious constitutional issues at hand by that court was no less a positive rejection of Petitioner's First Amendment assertions. As this Court has stated:

> "We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of [28 U.S.C. §1257] as if it had been specifically referred to and the right directly refused." *Chapman v. Crane,* 123 U.S. 540, 548 (1887).

2. Respondent also contends that it was unnecessary for the Supreme Court of Georgia to meet Petitioner's constitutional objections due to the existence of other adequate and independent non-federal grounds which authorized the affirmance of the trial court, principally, the alleged failure of Petitioner to timely file its objections to the discovery sought. Respondent, however, has raised the issue of the timeliness of Petitioner's objections at every stage in the trial court and as she states (Resp. Brief, p. 7) devoted a substantial portion of her brief to this subject in the Supreme Court of Georgia. She has nevertheless failed at every step to obtain a ruling that Petitioner's objections were anything but timely filed. In fact, the Supreme Court of Georgia rejected Respondent's timeliness argument and specifically held to the contrary:

> "The plaintiff filed interrogatories and a request for production of documents against the College. No discovery was filed against the individual defendants.

> *All three defendants timely answered.*" (Cert. Petition at A35). (Emphasis supplied)

3. Respondent alleges that Petitioner failed to make a threshold showing it is an entity entitled to assert First Amendment protection and that this constitutes an additional adequate state ground upon which the affirmance of the trial court was authorized. Related to this contention is her claim that Petitioner failed to establish its status as a "legitimate religious organization." There is is no basis in the record or the newspaper articles she cites for either contention.

The church-related status of Ambassador College was set forth in detail in response to Interrogatory No. 6 (R. 78) and a copy of its Articles of Incorporation was produced pursuant to request. These portions of the record clearly show the obvious religious standing of the College as the type of organization that is entitled to protection afforded individuals and churches by the Constitutions of the State of Georgia and the United States. Respondent made no attempt before the trial court to challenge Petitioner's assertion that it is a church-related college or to dispute the truthfulness of Petitioner's responses to her discovery.[1]

For the first time, however, in her Response in this Court, she makes the totally unfounded statement that

---

1. Petitioner's claim to church-related status is not rendered insufficient by the decision in *Reynolds v. Reynolds,* 217 Ga. 234, 123 S.E. 2d 115 (1961) as urged by Respondent. In fact, Respondent's reliance on *Reynolds* is grossly misplaced. There, the Supreme Court of Georgia merely held that in a divorce action the procedure whereby the plaintiff propounded written interrogatories to be answered by himself, with both the defendant and defendant's counsel excluded, was void and that the testimony of plaintiff was therefore without probative value.

Indeed, Petitioner is hard-pressed to determine what more it could have done to show its relationship to the World Wide Church of God other than truthfully answering under oath the questions asked by Respondent.

the main thrust of this litigation was to determine whether Petitioner is legitimate. The issue of whether religious beliefs are "legitimate" is simply non-justiciable. *U. S. v. Ballard,* 322 U.S. 78 (1944). Moreover, the question of whether or not officials of the Worldwide Church of God misappropriated church funds has no relationship whatsoever to this case and the claim by Respondent that her mother was the subject of religious "brainwashing" which induced her to make a deferred gift to Ambassador College.[2]

4. Respondent's attempt to extract language from the Supreme Court of Georgia opinion to show that the Court based its affirmance on the non-federal questions of timeliness of filing and evidentiary support for Petitioner's constitutional objections is simply unsupported by the opinion. An examination of the treatment by the Supreme Court of Georgia of Petitioner's constitutional objections reveals that the Court did not base its affirmance of the trial court on either of the grounds urged by Respondent. Rather its decision turned on relevancy and admissibility which it believed to be the only question which must be considered when ruling on constitutional objections to the discovery of information protected by the right of associational privacy and freedom of religion.

It stated:

"The appellant College argues that the disclosure sought would violate its constitutional rights of free exercise and non-establishment of religion; freedom of association; privacy and/or security in their per-

2. Respondent's obvious attempt to prejudice Petitioner before this Court is regrettable but nevertheless irrelevant. Her argument makes about as much sense as saying that General Motors is not a "legitimate" auto maker and, therefore, cannot assert otherwise appropriate defenses to a breach of warranty claim because its officials were accused in the press of improper conduct concerning an entirely unrelated matter.

sons, houses, paper and effects against unreasonable searches and seizures. Assuming that this appellant's objections were timely made and substantiated, *they relate primarily to the admissibility in evidence of such information.* The latter portion of Code Ann. §81A-126(b)(1), the first sentence of which was quoted hereinabove, is as follows: 'It is not ground for objection that information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.' *As the information here sought appears reasonably calculated to lead to the discovery of admissible evidence, and does not fall within any of the guidelines for entry of protective orders, it was not error to compel the discovery and grant the sanction for non-compliance therewith."* (Cert. Petition at A36). (Emphasis supplied)

The above-quoted holding of the Georgia Supreme Court clearly demonstrates that the constitutional assertions of Petitioner were effectively ignored by pigeonholing Petitioner's constitutional objections into the completely unrelated category of the scope of discovery. Nevertheless, the attempt by the Georgia Supreme Court to evade the troublesome constitutional issue before it in such a manner was a direct decision against Petitioner on the constitutional question presented.

Petitioner is aware of the decisions by this Court which hold that it will not review state court decisions which rest upon adequate and independent non-federal grounds. *Young v. Ragen,* 337 U.S. 235 (1949). However, as demonstrated above, this is simply not such a case. Respondent, at best, urges that the Georgia Supreme Court's affirmance of the trial court might possibly have rested on state law. However, the fact that

a state court might have, but did not, invoke state law does not foreclose jurisdiction in this Court. *Zacchini v. Scripps-Howard Broadcasting Company*, 433 U.S. 562 (1977).

CONCLUSION

For the foregoing reasons, and for the reasons stated in its earlier Petition, Petitioner respectfully urges the Court to grant a Writ of Certiorari, to reverse the decision below, and to remand the case to the Supreme Court of Georgia with appropriate instructions.

Respectfully submitted,

W. Warren Plowden, Jr.
Eric D. Griffin, Jr.
500 First National Bank Building
Macon, Georgia 31201
Ben B. Mills, Jr.
323 South Grant Street
Fitzgerald, Georgia 31750
Attorneys for Petitioner